

In re Ernest W. Willis, Debtor

CASE NO.: 07-11010

The Debtor claimed exemptions in a Merrill Lynch individual retirement account (“IRA”), an AmTrust IRA, and a Fidelity IRA under § 522(b)(3)(C). The Trustee and Creditor objected to the Debtor’s claimed exemptions asserting that the IRAs were not exempt as a result of the Debtor’s operation of the IRAs. The Court first determined that § 522(b)(4)(A), which applies when an IRA has received an IRA favorable determination, applied to determine whether the Debtor’s IRAs were exempt. The Court next determined that the presumption of exemption established by the favorable determination under § 522(b)(4)(A) can be rebutted by evidence establishing that the IRA was improperly operated under applicable Internal Revenue Code (“IRC”) provisions, thereby disqualifying the IRA funds from exempt status under § 522(b)(3)(C). Under this analysis, the Court concluded that the funds in the Merrill Lynch IRA were not exempt because the Debtor engaged in prohibited transactions under the IRC, the funds in the AmTrust IRA were not exempt because they constituted funds from the Merrill Lynch IRA, and \$60,000 in the Fidelity IRA were not exempt because they constituted funds from the Merrill Lynch IRA.